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Comments On Proposed Rule -- Retail Electric Competition

SEP 12 1996

Arizona Community Action Association

Docket No. U-0000-94-165

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September 12, 1996

The Arizona Community Action Association (ACAA) appreciates the opportunity to provide comments on the Proposed Rule for Retail Electric Competition developed by the Staff of the Arizona Corporation Commission, dated August 28, 1996.

ACAA is not willing to support retail electric competition if it will result in higher prices and costs, cost shifting, and/or poorer quality of service for low income consumers. ACAA is willing to support retail electric competition only if it will provide net benefits (i.e., benefits that exceed costs and risks) for low income consumers. These net benefits have been promised by the advocates for retail electric competition, particularly by the industrial and large commercial consumers, and by power marketers and some utilities. However, ACAA does not believe that any and all forms of retail electric competition will result in net benefits for low income consumers, or even residential consumers. On the contrary, ACAA believes that most forms of retail electric competition will result in higher prices and costs, as well as poorer quality of service, for low income and residential consumers.

Therefore, ACAA strongly recommends that the Commission not move forward with retail electric competition unless the Commission can design and implement a system that will provide net benefits to all customer classes and segments, including low income consumers. The recommended revisions and clarifications of the Proposed Rule described below must be implemented in order for low income consumers to have the opportunity to secure the promised net benefits and avoid undue increases in costs and risks.

SPECIFIC COMMENTS ON THE PROPOSED RULE

ACAA supports some parts of the Proposed Rule, does not support other parts, and notes that many important details and issues remain unresolved.

ACAA recommends revising, expanding, and clarifying the Proposed Rule to ensure that low income consumers will receive a fair share of the benefits, while protecting them against undue increases in costs and risks.

Below are specific comments on some key sections of the Proposed Rule. Note that ACAA is addressing only the subset of sections and related issues that are of most interest and importance to ACAA's constituency, given the limited time available to provide comments.

R14-2-xxx3. Certificates of Convenience and Necessity.

ACAA supports this section. Under section B, ACAA recommends adding a section requiring all companies to provide information describing how they would handle customer complaints and how they would resolve disputes.

ACAA recommends that all companies be required to pay a licensing fee. The licensing fee could be used to offset the costs of stranded investment.

R14-2-xxx4. Competitive Phases.

ACAA supports implementation of retail electric competition in three phases, with the first phase of implementation to begin after the most important outstanding issues are resolved (beginning as early as June 30, 1997 and no later than January 1, 1999).

ACAA supports all affected utilities making available at least 20 percent of their 1995 system retail peak demand for competitive generation supply in the first phase (by January 1, 1999), at least 50 percent of their retail peak demand in the second phase (by January 1, 2001), and all of their retail peak demand in the third phase (by January 1, 2003).

ACAA supports all affected utilities opening their markets to retail electric competition at the same time, with portions of all classes and segments of consumers being given the opportunity to choose their energy supplier in each of the three phases of implementation.

ACAA strongly recommends that low income and residential consumers be given greater opportunities than commercial and industrial consumers to select their energy supplier in the first two phases of implementation. This approach will help offset the negative impacts of the competitive disadvantages faced by low income and residential consumers during the transition to a restructured industry, encourage innovative and effective approaches for supplying energy to these consumer segments, ensure that a fair share of the limited supplies of lower cost electricity will be available for these consumers, and give low income and residential consumers an opportunity to secure some of the benefits of a competitive market. In addition, this approach will ensure that the potential benefits of retail electric competition reach a majority of customers.

If implemented, the Proposed Rule would result in an unfair allocation of benefits in the first two phases of retail electric competition. The Proposed Rule would allocate up to 80% of eligible demand to commercial and industrial consumers in the two phases, and only a minimum of 20% to residential consumers (including low income consumers). As Exhibits ACAA-1, ACAA-2, and ACAA-4 show, this allocation would result in 43% of existing APS and TEP large load consumers (those with peak demand > 3 MW) being served by the competitive market by the end of phase 1, while only 5% of residential consumers and only 7% of all consumers would have the opportunity to secure the benefits of a competitive

market in the first phase. By the end of phase 2, this allocation would result in all existing large load consumers being served by the competitive market, while only 24% of residential consumers and only 26% of all consumers would have the opportunity to secure the benefits of a competitive market. Clearly, this is not a fair allocation of potential benefits.

ACAA strongly recommends that the portions of eligible demand opened to retail electric competition be higher for low income and residential consumers in the first two phases of implementation, and lower for other classes and segments. ACAA recommends that at least 55% of eligible demand be allocated to residential and low income consumers, and no more than 45% of eligible demand be allocated to commercial and industrial consumers (including those with demand greater than 3 MW). More specifically, ACAA proposes the following allocations for both the first and second phases:

| | |
|--|-------------|
| Large load (> 3 MW) | 15% maximum |
| Remaining Large C&I (200 kW to 3 MW) | 15% maximum |
| Small C&I (< 200 kW) | 15% minimum |
| Residential (not including low income) | 40% minimum |
| Low Income (< 150% of poverty) | 15% minimum |

Exhibits ACAA-1 through ACAA-4 compare the allocations set forth in the Proposed Rule to the allocations recommended by ACAA for both APS and TEP.

Using ACAA's recommended allocation, over 60% of all consumers would have the opportunity to secure the potential benefits of retail electric competition in the first two phases, compared to only about 26% of consumers using the allocation set forth in the Proposed Rule. By the end of phase 2, ACAA's recommended allocation would give at least 66% of residential and low income consumers, and about 44% of C&I consumers the opportunity to benefit from a competitive retail market. Note that both the Proposed Rule and ACAA-recommended allocations would serve about the same number of C&I customers (44%).

ACAA's recommended allocation will create a residential and low income market of sufficient size and scope to attract suppliers interested in serving residential and low income markets. It should also encourage creative, innovative, and effective approaches for serving the energy needs of these consumer groups early in the transition period. This is far better than having these consumers wait around for the crumbs at the end.

To minimize the potential objections of large load consumers, the share of eligible demand allocated to large load consumers could be spread out across all of them, with each customer having a portion of its load served by a competitive supplier.

This section of the Proposed Rule needs to be clarified to close any potential loopholes, including the potential for large C & I customers to aggregate their demand in order to move into the large load category (>3MW).

Methods for how customers will be selected for participation in the competitive generation market prior to 2003 should not be based solely on proposals from the affected utilities. ACAA recommends a combination of random selection (offering choices to customers selected at random) and designated geographical areas.

ACAA recommends consolidating some residential and low income consumers in geographic areas for the first two phases of implementation to increase opportunities for aggregation. Some of this geographic consolidation in the first two phases should be in rural areas. ACAA also suggests that automatic aggregation (by geographic area) be explored as a mechanism for increasing competitive opportunities for these consumers.

ACAA believes that consumers served by existing contracts should be eligible to participate in phased implementation of retail electric competition prior to the expiration of the existing contract only if: (1) the consumer and affected utility agree, (2) the consumer's demand is included in the categories used for allocating eligible peak demand set forth above (as ACAA's analysis has done), and (3) the consumer is required to abide by all of the provisions of the Proposed Rule (including the stranded investment and system benefits provisions) .

R14-2-xxx6. Services Required to be Made Available by Affected Utilities.

ACAA recommends expanding section C.1. regarding distribution service. Distribution service should be provided by a regulated monopoly distribution company. Distribution companies should be required to ensure their access charges are least-cost, and should be encouraged to use targeted DSM, renewables, and distributed generation to avoid or defer distribution system investments. Distribution access charges should be fair and nondiscriminatory.

ACAA recommends adding "cost-effective demand-side management services" to section C.

R14-2-xxx7. Recovery of Stranded Investment of Affected Utilities.

Stranded investment is an issue of fairness, not economic efficiency. Mechanisms used for the recovery of stranded investment should be fair, equitable, and nondiscriminatory.

ACAA recommends that the costs of net stranded investment be borne fairly by the utilities, new market entrants and suppliers, and consumers for whose needs the stranded generating facilities and regulatory assets were designed to meet. ACAA believes that captive consumers, especially low income customers, should not be left responsible for any of the costs of

stranded investment associated with generating facilities built to serve the loads of other consumers.

ACAA continues to be concerned that accelerated depreciation of assets as a means for mitigating stranded investment places the burden on smaller captive customers (including low income and residential customers), while larger customers shoulder either smaller parts of the burden (under the recent rate settlements) or none of the burden (under some special contracts). Customers are paying for stranded investment now, and accelerated depreciation just increases near-term costs, resulting in either price increases or smaller reductions in existing rates for captive customers.

ACAA recommends that stranded investment issues be resolved in one generic proceeding for all affected utilities (with substantial participation of public advocates and intervenors), rather than through utility-specific processes in which the affected utility requests recovery and the Commission makes a utility-specific determination.

After allocating appropriate and reasonable portions of net stranded investment costs to utilities and new market entrants/providers, low income consumers should be responsible for only that part of the remaining portion of net stranded investment associated with generating facilities and regulatory assets designed to meet their needs prior to restructuring and the early onset of competition (i.e., prior to special contracts and flexible pricing). The resulting amount should be non-existent or very low for low income consumers.

The portion of net stranded investment to be recovered from consumers (if any) should be collected using a combination of (1) non-bypassable distribution access charges applied on a per kWh basis to the volume of energy sales for consumers remaining on the distribution system (with allocations by customer class and segment based on the portion of generating facilities and regulatory assets designed to meet the needs of the class/segment prior to restructuring), and (2) exit fees for consumers who leave the distribution system (or who otherwise attempt to avoid the access charges).

R14-2-xxx8. System Benefits Charges.

ACAA recommends that Commission-mandated programs that provide system benefits (including low income, DSM, renewables, environmental, research and development, and nuclear decommissioning programs) be funded using a non-bypassable system benefits charge, applied on a per kWh basis to the volume of energy sales for all distribution consumers.

ACAA believes the Proposed Rule should set the minimum funding level for system benefits programs, and suggests a minimum amount equivalent to 3.5% of 1995 retail revenues for low income, DSM, renewables, environmental, and research and development activities (with nuclear power plant decommissioning being funded outside of this base amount).

ACAA recommends that the specific system benefits cost recovery mechanism be designed in one generic process or proceeding rather than being based on proposals from individual affected utilities. ACAA recommends that Staff, the utilities, and other interested parties further develop the system benefits charge, and funding levels and allocations within the charge, through a workshop process. Also, ACAA recommends that Staff, the utilities, and other interested parties discuss any needed changes to the nature, scope, or focus of the programs, as well as the appropriate agent(s) to administer, implement, and/or evaluate the performance of these programs.

ACAA believes that low income programs such as rate discounts, weatherization, education, and case management will be essential for meeting the needs of low income consumers. Therefore, these programs should be listed explicitly in the System Benefits section of the Proposed Rule.

R14-2-xxx9. Solar Portfolio

R14-2-xxx4.G. Renewable Energy Buy-Throughs.

ACAA recommends that increased use of renewable resources be encouraged in a retail electric competition environment.

ACAA supports both the solar portfolio standard and the renewable energy buy-through mechanism as viable and effective approaches for encouraging greater use of renewable energy in Arizona. ACAA also recommends that distribution companies be encouraged to use renewable energy to avoid or defer distribution investments and in other distributed generation activities.

ACAA believes that low income consumers should have the opportunity to use renewable resources, and recommends that energy suppliers, distribution companies, and renewables businesses be encouraged to provide renewables options to all consumers.

R14-2-xxx13. Service Quality, Consumer Protection, Safety, and Billing Requirements.

The existing quality of service should be maintained, and should be encouraged to increase, by using explicit quality of service standards for distribution companies, transmission companies, aggregators, and all energy suppliers.

Existing consumer safeguards and protections may need to be increased, and new consumer protections added, to protect consumers against unfair trade practices, including fraud and misrepresentation.

ACAA is in the process of reviewing the specific subsections cited in the

Proposed Rule, and at this time does not know if the existing consumer protection rules will be adequate or inadequate.

Section P should be expanded. Consumers are likely to be confused by their new choices, wary of the new options and the associated claims of marketers, and irritated by the barrage of marketing that will interrupt their lives and businesses. Clear, objective, understandable information on energy and service proposals, in equivalent formats, supported by impartial consumer education, will be required to ensure that consumers are fully aware of the options that they might choose. Consumer-oriented prospectus standards and consumer protection regulation will be required to ensure that energy and service providers give accurate and understandable information to consumers, and section P should be expanded to address this. In addition, objective and impartial consumer education will need to be supported, particularly in the early stages of implementation.

Divestiture Versus Functional Separation

ACAA believes that existing vertically-integrated utilities must be separated into distribution, transmission, and generation companies. Divestiture of generation assets is far preferable to functional separation. However, ACAA recognizes that this will take time and will not be completed by the first two phases of phased implementation. Therefore, ACAA believes strongly-enforced functional separation is necessary until divestiture can be implemented and fully accomplished. Strongly-enforced functional separation is not addressed adequately by the Proposed Rule.

Exhibit ACAA-1

APS Scenarios

Note: 1995 estimates based on interpolations of 1994 data.

Scenario 1: Proposed Rule (Aug 28, 1996)

| Consumer Segments | 1995 System Retail Peak Demand | | | | Phase 1 (20%) = 715 MW | | | | Phase 2 (50%) = 1,789 MW | | | |
|------------------------|--------------------------------|------------------------|---------------------------|--|------------------------|----------------------|-------------------------------|------------|--------------------------|----------------------|-------------------------------|------------|
| | Number of Consumers | Total Peak Demand (MW) | Peak Demand Per Cons (kW) | | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class |
| Large Load (> 3 MW) | 55 | 825 | 15,000 | | 50% | 358 | 24 | 43% | 50% | 894 | 60 | 100% |
| Remaining C&I (< 3 MW) | 78,000 | 1,218 | 16 | | 40% | 286 | 18,326 | 23% | 30% | 537 | 34,360 | 44% |
| Residential | 625,000 | 1,500 | 2.4 | | 10% | 72 | 29,808 | 5% | 20% | 358 | 149,042 | 24% |
| Other/Irrigation | 1,600 | 34 | 21 | | | | | | | | | |
| Total | 704,655 | 3,577 | 5.1 | | 100% | 715 | 48,158 | 7% | 100% | 1,789 | 183,462 | 26% |

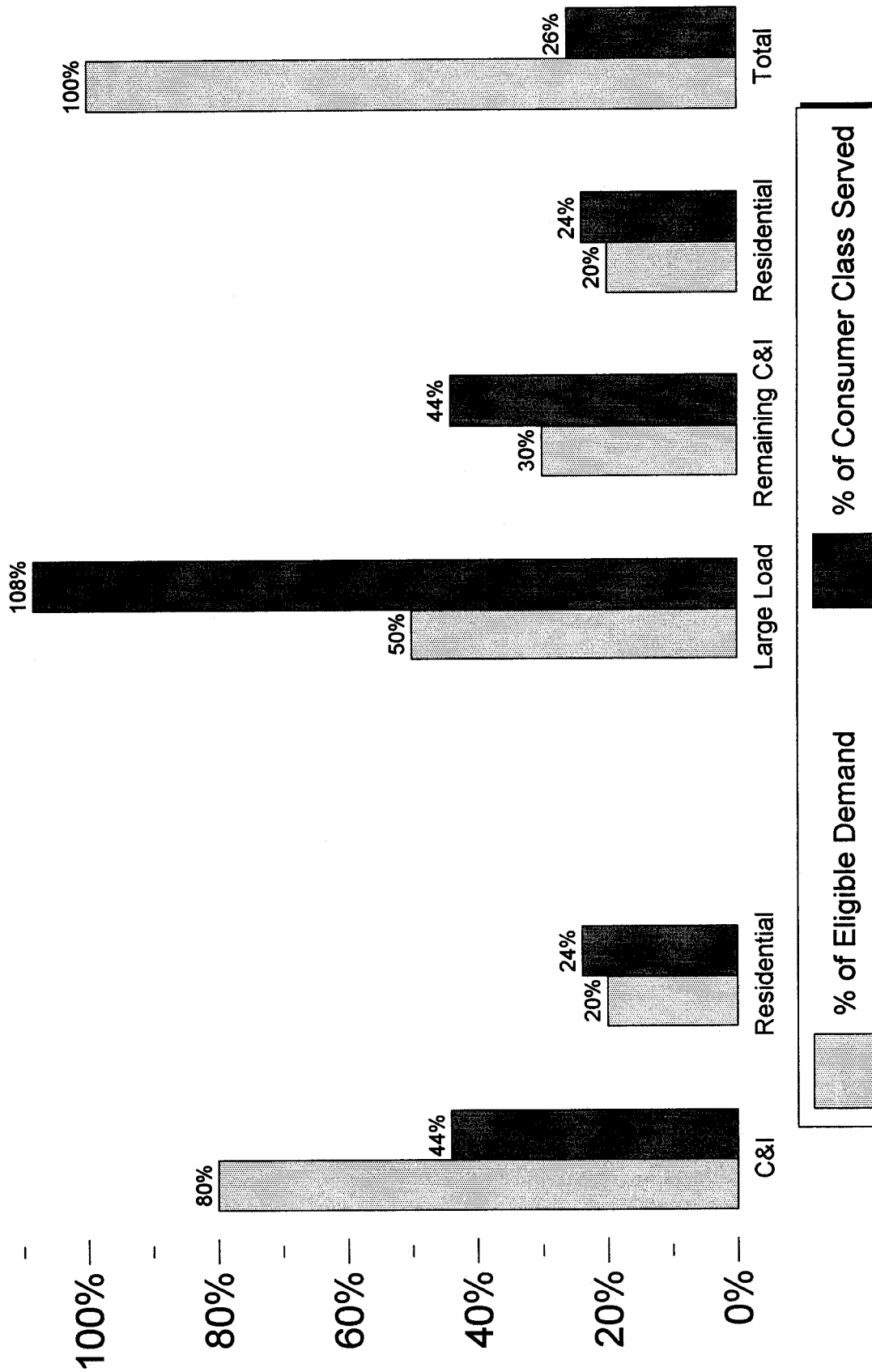
Assumes maximum portion of eligible demand for Large Load consumers (50%) and minimum portion for residential consumers (10% or 20%). ACAA assumptions used for Large Load consumers. Eligible demand not allocated to Other/Irrigation consumers in this example.

Scenario 2: ACAA Recommendation

| Consumer Segments | 1995 System Retail Peak Demand | | | | Phase 1 (20%) = 715 MW | | | | Phase 2 (50%) = 1,789 MW | | | |
|----------------------------------|--------------------------------|------------------------|---------------------------|--|------------------------|----------------------|-------------------------------|------------|--------------------------|----------------------|-------------------------------|------------|
| | Number of Consumers | Total Peak Demand (MW) | Peak Demand Per Cons (kW) | | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class |
| Large Load (> 3 MW) | 55 | 825 | 15,000 | | 15% | 107 | 7 | 13% | 15% | 268 | 18 | 33% |
| Remaining C&I (< 3 MW) | 78,000 | 1,218 | 16 | | 30% | 215 | 13,744 | 18% | 30% | 537 | 34,360 | 44% |
| Large C&I (200 kW to 3 MW) | | | | | (15%) | | | | (15%) | | | |
| Small C&I (< 200 kW) | 513,000 | 1,231 | 2.4 | | 40% | 286 | 119,233 | 23% | 40% | 715 | 298,083 | 58% |
| Residential (without low income) | 112,000 | 269 | 2.4 | | 15% | 107 | 44,713 | 40% | 15% | 268 | 111,781 | 100% |
| Low Income (< 150% of poverty) | 1,600 | 34 | 21 | | | | | | | | | |
| Other/Irrigation | | | | | | | | | | | | |
| Total | 704,655 | 3,577 | 5.1 | | 100% | 715 | 177,697 | 25% | 100% | 1,789 | 444,243 | 63% |

ACAA assumptions used for Large Load consumers. Eligible demand not allocated to Other/Irrigation consumers in this example. Breakout for Large and Small C&I not available; ACAA recommendation allocates 15% of eligible demand to each segment.

ACAA-2: Proposed Rule (Phase 2, APS)



ACAA-3: ACAA Recommend. (Phase 2, APS)

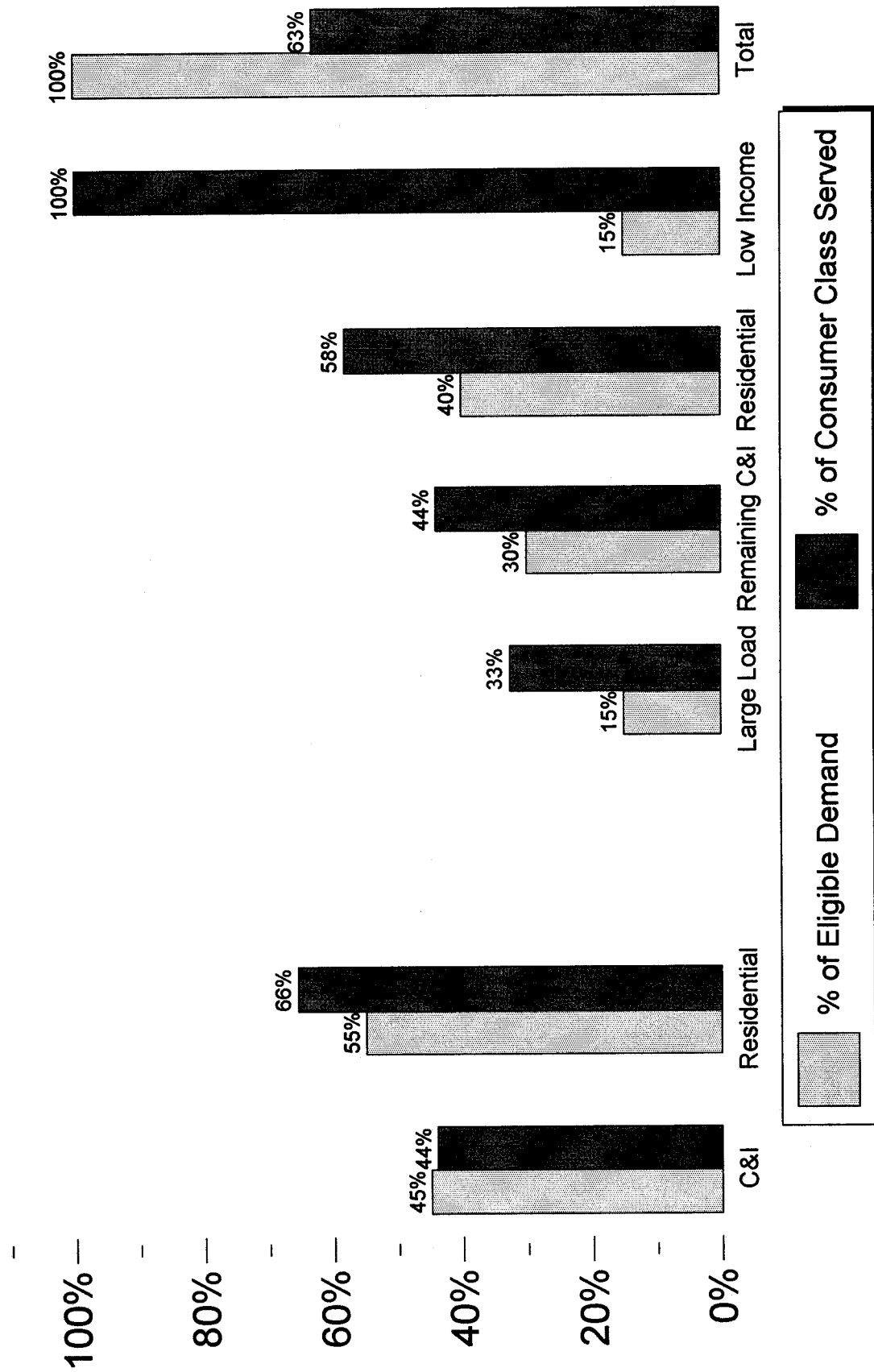


Exhibit ACA-4

TEP Scenarios

Scenario 1: Proposed Rule (Aug 28, 1996)

| Consumer Segments | 1995 System Retail Peak Demand | | | | Phase 1 (20%) = 303 MW | | | | Phase 2 (50%) = 757 MW | | | |
|------------------------|--------------------------------|-------------------|---------------------------|--|------------------------|----------------------|-------------------------------|------------|------------------------|----------------------|-------------------------------|------------|
| | Number of Consumers | Total Demand (MW) | Peak Demand Per Cons (kW) | | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class |
| Large Load (> 3 MW) | 25 | 350 | 14,000 | | 50% | 151 | 11 | 43% | 50% | 379 | 27 | 108% |
| Remaining C&I (< 3 MW) | 28,400 | 502 | 18 | | 40% | 121 | 6,852 | 24% | 30% | 227 | 12,848 | 45% |
| Residential | 274,000 | 628 | 2.3 | | 10% | 30 | 13,211 | 5% | 20% | 151 | 66,057 | 24% |
| Other | 105 | 34 | 324 | | | | | | | | | |
| Total | 302,530 | 1,514 | 5.0 | | 100% | 303 | 20,074 | 7% | 100% | 757 | 78,932 | 26% |

Assumes maximum portion of eligible demand for Large Load consumers (50%) and minimum portion for residential consumers (10% or 20%). ACA assumptions used for Large Load consumers. Eligible demand not allocated to Other consumers in this example.

Scenario 2: ACA Recommendation

| Consumer Segments | 1995 System Retail Peak Demand | | | | Phase 1 (20%) = 303 MW | | | | Phase 2 (50%) = 757 MW | | | |
|----------------------------------|--------------------------------|-------------------|---------------------------|--|------------------------|----------------------|-------------------------------|------------|------------------------|----------------------|-------------------------------|------------|
| | Number of Consumers | Total Demand (MW) | Peak Demand Per Cons (kW) | | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class | % of Eligible Demand | Reserved Demand (MW) | ---Consumers Served--- Number | % of Class |
| Large Load (> 3 MW) | 25 | 350 | 14,000 | | 15% | 45 | 3 | 13% | 15% | 114 | 8 | 32% |
| Remaining C&I (< 3 MW) | 28,400 | 502 | 18 | | 30% | 91 | 5,139 | 18% | 30% | 227 | 12,848 | 45% |
| Large C&I (200 kW to 3 MW) | | | | | (15%) | | | | (15%) | | | |
| Small C&I (< 200 kW) | 205,000 | 470 | 2.3 | | 40% | 121 | 52,845 | 26% | 40% | 303 | 132,112 | 64% |
| Residential (without low income) | 69,000 | 158 | 2.3 | | 15% | 45 | 19,817 | 29% | 15% | 114 | 49,542 | 72% |
| Low Income (< 150% of poverty) | 105 | 34 | 324 | | | | | | | | | |
| Other | | | | | | | | | | | | |
| Total | 302,530 | 1,514 | 5.0 | | 100% | 303 | 77,804 | 26% | 100% | 757 | 194,511 | 64% |

ACA assumptions used for Large Load consumers. Eligible demand not allocated to Other consumers in this example. Breakout for Large and Small C&I not available; ACA recommendation allocates 15% of eligible demand to each segment.

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